

Section 8, Index to:  
RECORDED BY: Acme-Stockton  
JAMES M. COHEN, Jr. Galvanizing  
Works

Recording requested by:

91 JAN 25 AM 8:00

SHERIDAN RANDOLPH  
3564 GRESHAM COURT  
PLEASANTON, CA 94566

RECORDED AT REQUEST OF

When recorded, mail certified copy to:

Department of Health Services  
Toxic Substances Control Program  
Region 1 (Northern California Section)  
10151 Croydon Way, Suite 3  
Sacramento, CA 95827

301

COVENANT AND AGREEMENT  
TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made on the  
26<sup>th</sup> day of December, 1990, by  
Sheridan Randolph ("Covenantor"), who is the owner of record  
of certain real property situated in the City of Stockton,  
County of San Joaquin, State of California, described in  
Exhibit "A" attached hereto and incorporated herein by this  
reference ("the Property") and by the California Department of  
Health Services, with reference to the following facts:

A. This Property, as described in Exhibit "A" is the real  
property known as Acme-Stockton Galvanizing Works,  
located at 540 West Scotts Avenue, Stockton, County of  
San Joaquin, California, which has been the site of a  
hazardous substance release.

OFFICIAL FILE COPY  
TOXIC SUBSTANCES CONTROL DIVISION  
CENTRAL FILE UNIT

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B. The Property is located in an industrial area of the City of Stockton and was formerly used as a zinc galvanizing operation. Accidental spillage from acidic vats and wash tanks contaminated the soil at this property. The contaminated soil underneath the southern one-half portion of the building located on the property exceeded hazardous levels of zinc, lead and pH. The contaminated soil was excavated, chemically treated and stabilized, and then redeposited into a large trench underneath the southern one-half portion of the building located on the property, and then covered and capped with an asphalt floor.

C. Covenantor desires and intends that in order to protect the present or future public health and safety and the environment, the Property shall be used in such a manner as to avoid potential harm to persons or property which may result from stabilized soil which has been deposited into the ground under the area delineated and defined by the southern one-half portion of the building located on the Property as described in Exhibit "A".

D. The Covenantor further desires and intends that the terms of the Covenant are for the mutual benefit of the Property and shall constitute an easement held by the People of the

1 ACME-STOCKTON GALVANIZING WORKS  
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5 State of California in the Property which shall run with  
6 the land, shall inure to the benefit of the Property, and  
7 shall apply to and bind the respective successors in  
8 interest thereof.

9 ARTICLE I

10 GENERAL PROVISIONS

11 1.01 Provisions To Run With The Land. This Covenant sets  
12 forth protective provisions, covenants, restrictions, and  
13 conditions, (collectively referred to as "Restrictions"), upon  
14 and subject to which the Property and every portion thereof  
15 shall be improved, held, used, occupied, leased, sold,  
16 hypothecated, encumbered, and/or conveyed. Each and all of  
17 the Restrictions shall run with the land, and pass with each  
18 and every portion of the Property , and shall apply to and  
19 bind the respective successors in interest thereof. Each and  
20 all of the Restrictions are imposed upon the entire Property  
21 as mutual equitable servitudes in favor of the Property and  
22 every portion thereof, unless expressly stated as applicable  
23 to a specific portion of the Property. Each and all of the  
24 Restrictions are imposed pursuant to Sections 25355.5 and  
25 25356.1 of the California Health and Safety Code and run with  
26 the land pursuant to Section 25355.5. Each and all or the  
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Restrictions are enforceable by the Department of Health Services, and its successor agencies, if any.

1.02 Concurrence Of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property will be subject to the Restrictions contained herein.

1.03 Incorporation Into Deeds And Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the Property.

ARTICLE II  
DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Health Services and shall include its

5  
6 successor agencies, if any.

7 2.02 Improvements. "Improvements" shall mean all buildings,  
8 structures, roads, driveways, regradings, and paved parking  
9 areas, constructed or placed upon any portion of the Property.

10 2.03 Occupants. "Occupants" shall mean those persons  
11 entitled by ownership, leasehold, or other legal relationship  
12 to the exclusive right to occupy any portion of the Property.

13 2.04 Owner. "Owner" shall mean the Covenantor or its  
14 successors in interest, including heirs, and assigns, who  
15 hold title to all or any portion of the Property.

16 2.05 "Excavation" shall mean the excavation of stabilized  
17 soil below the asphalt and/or cement cap that covers the  
18 Property.

19  
20 2.06 "Hazardous materials" shall have the meaning set forth  
21 in California Code of Regulations, Title 22, Section 66084.

22  
23 ARTICLE III  
24 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

25 3.01 Restrictions On Use. Covenantor promises to restrict  
26 the use of the Property as follows:  
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5 (A) The Property at 540 West Scotts Avenue shall not be  
6 used for residences, hospitals, schools for persons  
7 under age 21, day-care centers or any permanently  
8 occupied human habitation, including hotels or motels  
9 which are used as a permanent residence by employees,  
10 without the prior written approval of the Department.

11 (B) No use of the Property shall be allowed to disturb the  
12 integrity of the final asphalt and/or cement cap over  
13 the stabilized soil that has been redeposited into the  
14 ground in the area defined and delineated by the southern  
15 one/half portion of the building located on the Property  
16 as described in Exhibit "A", unless the Covenantor, owner,  
17 occupant or lessee can adequately demonstrate to the  
18 Department that the disturbance of the final cap is  
19 necessary to the proposed use of the Property and will not  
20 increase any potential hazard to the public health and  
21 safety or the environment, or is necessary to reduce an  
22 imminent threat to the public health and safety or the  
23 environment.

24 3.02 Conveyance Of Property. The Covenantor, Owner or  
25 Owners shall provide a thirty (30) day advance notice to the  
26 Department of any sale, lease, or other conveyance of the  
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5 Property or an interest in the Property to a third person.  
6 The Department shall not, by reason of the Covenant, have  
7 authority to approve, disapprove, or otherwise affect any  
8 sale, lease, or other conveyance of the Property except as  
9 otherwise provided by law, by administrative order, or by  
10 reason of this Covenant.

11 3.03 Enforcement. Failure of the Covenantor, Owner or  
12 Occupant to comply with any of the requirements, as set forth  
13 in Section 3.01, shall be grounds for the Department, by  
14 reason of the Covenant, to require that the Covnenator, Owner  
15 or Occupant modify or remove any Improvements constructed in  
16 violation of that section. Violation of the Covenant shall be  
17 grounds for the Department to file civil and criminal actions  
18 against the Covenator, Owner or Occupant as provided by law.

19 3.04 Notice In Agreements. All Owners and Occupants  
20 shall execute a written instrument which shall accompany all  
21 purchase, lease, sublease, or rental agreements relating to  
22 the Property. The instrument shall contain the following  
23 statement:  
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25 "The land described herein contains hazardous substances.  
26 Such condition renders the land and the owner, lessee,  
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5 or other possessor of the land subject to requirements,  
6 restrictions, provisions, and liabilities contained  
7 in Chapters 6.5 and 6.8 of Division 20 of the California  
8 Health and Safety Code. This statement is not a  
9 declaration that a hazard exists."

10 ARTICLE IV

11 VARIANCE AND TERMINATION

12  
13 4.01 Variance. Any Owner or, with the Owner's consent, any  
14 Occupant of the Property or any portion thereof may apply to  
15 the Department for a written variance from the provisions of  
16 this Covenant. Such application shall be made in accordance  
17 with Section 25233 of the California Health and Safety Code.

18 4.02 Termination. Any Owner or, with the Owner's consent,  
19 an Occupant of the Property or any portion thereof may apply  
20 to the Department for a termination of the Restrictions as  
21 they apply to all or any portion of the Property. Such  
22 application shall be made in accordance with Section 25234 of  
23 the California Health and Safety Code.

24  
25 4.03 Term. Unless terminated in accordance with Section  
26 4.02 above, by law or otherwise, this Covenant shall continue  
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5 in effect in perpetuity.

6 ARTICLE V

7 MISCELLANEOUS

8  
9 5.01 No Dedication Intended. Nothing set forth herein shall  
10 be construed to be a gift or dedication, or offer of a gift or  
11 dedication, of the Property to the general public or for any  
12 purposes whatsoever.

13 5.02 Notices. Whenever any person shall desire to give  
14 or serve any notice, demand, or other communication with  
15 respect to this Covenant, each such notice, demand, or other  
16 communication shall be in writing and shall be deemed  
17 effective [1] when delivered, if personally delivered to  
18 the person being served or to an officer of a corporate  
19 party being served or official of a government agency being  
20 served, or [2] three (3) business days after deposit in the  
21 mail if mailed by United States mail, postage paid certified,  
22 return receipt requested:

23 To: Ms. Sheridan Randolph  
24 Acme-Stockton Galvanizing Works  
25 3564 Gresham Court  
26 Pleasanton, CA 94566  
27

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Copy to: Department of Health Services  
Toxic Substances Control Program  
Region 1, Site Mitigation Branch  
10151 Croydon Way, Suite 3  
Sacramento, California 95827

5.03 Partial Invalidity. If any portion of the Restrictions set forth herein or terms are determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor, and by the Director, California Department of Health Services. This instrument shall be recorded by the Covenantor in the County of San Joaquin within ten (10) days of the date of execution.

5.06 References. All references to Code section include successor provisions.

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IN WITNESS WHEREOF, the parties execute this Covenant as of  
the date set forth below.

OWNER

ACME STOCKTON-GALVANIZING WORKS  
*Acme Stockton Galvanizing Works*

By:

*Sheridan C. Randolph*  
SHERIDAN RANDOLPH

Title:

*Pres*

Date:

*12-26-90*

DEPARTMENT OF HEALTH SERVICES

By:

*Ed J. Jirka*

Title:

*Reg. Admin*

Date:

*1-3-91*

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STATE OF CALIFORNIA

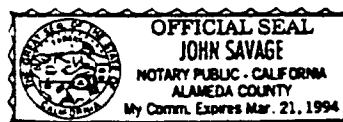
COUNTY OF

Alameda

On December 26, 1990, before me, the undersigned, a Notary Public in and for said state, personally appeared Sheridan C. Randolph, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as President, of Acme Stockton Galvanizing Works, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

John Savage  
Notary Public in and for said County and  
State



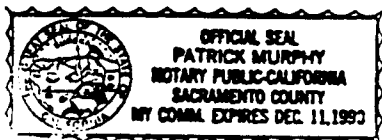
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5 STATE OF CALIFORNIA )  
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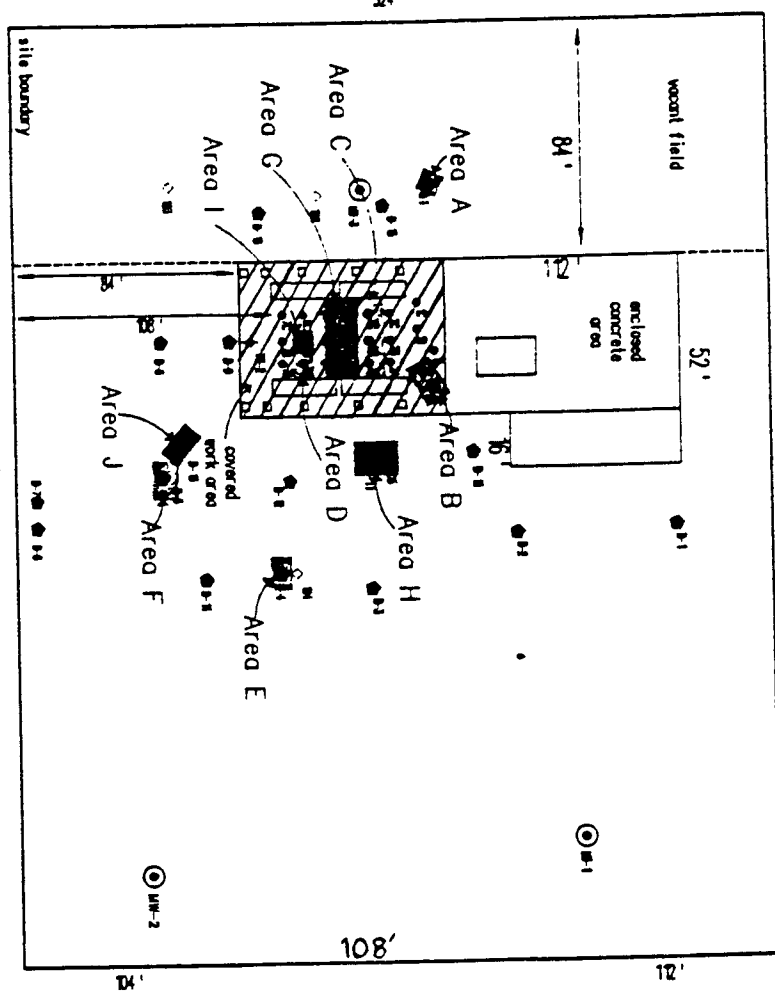
On JANUARY 4, 1991, before me, the undersigned, a Notary Public in and for said state, personally appeared VAL F. SIEBAL, personally ~~known to me or~~ proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as Regional Administrator, of the Department of Health Services, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

[Signature]  
 Notary Public in and for said County and State



292'



# LEGEND

- ⊕ sampling location by McKesson Environmental Services
- ⊕ location of boring by McKesson Environmental Services
- ⬢ location of boring by Hydrotech Consultants, Inc.
- ⊕ location of monitoring well by Hydrotech Consultants, Inc.
- ◇ location of boring by Clayton Environmental Consultants
- ▨ lead and zinc contamination area
- low pH area
- clean soil and remediated soil area
- ▨ stabilized soil area

(not to scale)

<b>Clayton</b> ENVIRONMENTAL CONSULTANTS	Generalized Site Map Acme-Stockton Galvanizing Works 540 West Scotts Avenue Stockton, California Clayton Project No: 27455.00	Figure 1
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## ACME-STOCKTON GALVANIZING WORKS

### EXHIBIT "A"

PROPERTY DESCRIPTION: LOTS 1, 2, 3, 4, 5, 6, 7, 8, 13, & 14, PLUS WESTERLY ONE-THIRD OF LOTS 15 & 16, ALL IN BLOCK 15 SOUTH OF NORMAN CHANNEL IN CITY OF STOCKTON ACCORDING TO THE OFFICIAL MAP THEREOF, TOGETHER WITH A STRIP OF LAND 80 FEET BY 300 FEET WEST OF THE ABOVE DESCRIBED PROPERTY.

When embossed, and printed in purple ink, this is certified to be a true copy of the records of the San Joaquin County Records Office.

JAN 25 1991  
By Margaret Thomas YVONNE I. UDALL, Recorder Deputy